

Q 616-1

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

In the Matter of

THE HONGKONG AND SHANGHAI BANKING
CORPORATION LIMITED, NEW YORK BRANCH

Case No. 93-91

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (the "Act"),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), as amended (61 Fed. Reg. 12714, March 25, 1996)) (the "Regulations"),² against The Hongkong and Shanghai Banking Corporation Limited, New York Branch ("HongkongBank"), a branch of a foreign banking corporation licensed to do business in the State of New York,

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).

² The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations. The restructured Regulations established the procedures that apply to this Order.

based on the allegations set forth in the Proposed Charging Letter, dated May 14, 1997, attached hereto and incorporated herein by this reference; and

The Department and HongkongBank having entered into a Settlement Agreement, incorporated herein by this reference, whereby HongkongBank has agreed to settle this matter by the payment of a civil penalty in the amount of \$23,000 to the Department; and

The Assistant Secretary for Export Enforcement having approved the terms of the Settlement Agreement;

IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$23,000 is assessed against HongkongBank;

SECOND, HongkongBank shall pay to the Department the sum of \$23,000 within forty-five (45) days of the service of this Order as specified in the attached instructions;

THIRD, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty assessed herein is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be

granted, to HongkongBank. Accordingly, if HongkongBank should fail to pay in a timely manner the civil penalty assessed against it, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of HongkongBank's export privileges for a period of one year from the date of entry of this Order; and

FOURTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon HongkongBank.

This Order is effective immediately.

Frank W. Deliberti
 Frank W. Deliberti
 Acting Assistant Secretary
 for Export Enforcement
 Bureau of Export Administration

Entered this 24th day of July, 1997.

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
14th STREET & CONSTITUTION AVENUE, N.W.
WASHINGTON, D.C. 20230

ATTN: MIRIAM COHEN

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of)
)
)
THE HONGKONG AND SHANGHAI BANKING)
CORPORATION LIMITED, NEW YORK BRANCH)
)
)

Case No. 93-91

SETTLEMENT AGREEMENT

This agreement is made by and between The Hongkong and Shanghai Banking Corporation Limited, New York Branch ("HongkongBank"), a branch of a foreign banking corporation licensed to do business in the State of New York, and the United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 768-799 (1997), as amended (61 Fed. Reg. 12714, March 25, 1996)) (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (the "Act").²

¹ The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A-799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations. The restructured Regulations, to be codified at 15 C.F.R. Parts 730-744, established the procedures that apply to this Settlement Agreement.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, has notified HongkongBank of its intention to initiate an administrative proceeding against HongkongBank pursuant to Section 11(c) of the Act by issuing the Proposed Charging Letter, dated May 14, 1997, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, HongkongBank has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, HongkongBank neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, HongkongBank agrees to be bound by the appropriate Order ("Order") when entered;

a 616-1

NOW, THEREFORE, HongkongBank and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over HongkongBank with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter, HongkongBank will pay to the Department the amount of \$23,000 within forty-five (45) days of service upon it of the Order.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to HongkongBank. Failure to make timely payment of the civil penalty shall result in the denial of all of HongkongBank's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, HongkongBank hereby

waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:

- a. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - b. Request a refund of the funds paid by HongkongBank pursuant to this Settlement Agreement and the Order, when entered;
or
 - c. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. The Department, upon entry of the Order, will not subsequently initiate any further administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against HongkongBank, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising


out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

6. HongkongBank understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by HongkongBank that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against HongkongBank in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind, constrain or otherwise limit any action by any

other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the Order.


THE HONGKONG AND SHANGHAI BANKING
CORPORATION LIMITED, NEW YORK BRANCH



John C. Simons
Vice President and Assistant Counsel
Legal Department

16 June 1997
Date

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Acting Director
Office of Antiboycott Compliance

July 7, 1997
Date



9616-11
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 14, 1997

The Hongkong and Shanghai Banking
Corporation Limited, New York Branch
140 Broadway
New York, New York 10015

Attention: John C. Simons
Vice President and Assistant Counsel
Legal Department

Re: The Hongkong and Shanghai Banking Corporation Limited,
New York Branch
Case No. 93-91

Gentlemen:

We have reason to believe and charge that you, The Hongkong and Shanghai Banking Corporation Limited, New York Branch, have committed thirteen (13) violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1997), as amended (61 Fed. Reg. 12714, March 25, 1996)) (the "Regulations")¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1996)) (the "Act").²

¹ Certain of the alleged violations occurred during 1989, 1990 and 1991. The Regulations governing those violations are found in the 1989, 1990 and 1991 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1989, 1990 and 1991)). Those Regulations are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations, to be codified at 15 C.F.R. Parts 730-774, established the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).



We charge that, with intent to comply with, further, or support an unsanctioned foreign boycott, on one (1) occasion you implemented a letter of credit containing a condition or requirement compliance with which is prohibited by Section 760.2(f) of the Regulations, and not excepted. We also charge that, with intent to comply with, further, or support an unsanctioned foreign boycott, on three (3) occasions you knowingly agreed to refuse to do business with other persons or knowingly agreed to require other persons to refuse to do business with persons pursuant to a requirement of or a request from or on behalf of a boycotting country, activities prohibited by Section 769.2(a) of the former Regulations, and not excepted.

Additionally, we charge you with eight (8) violations of Section 769.6 of the former Regulations and one (1) violation of Section 760.5 of the Regulations, in that you failed on eight (8) occasions to report to the Department your receipt of requests to engage in restrictive trade practices or unsanctioned foreign boycotts, in violation of Section 769.6 of the former Regulations, and on one (1) occasion you failed to report within the time prescribed in the Regulations your receipt of a request to engage in a restrictive trade practice or unsanctioned foreign boycott, in violation of Section 760.5 of the Regulations.

We allege that:

1. You are a branch of a foreign banking corporation licensed to do business in the State of New York. During the period of the violations alleged to have occurred in 1989, 1990 and 1991, you were a United States person as defined by Section 769.1(b) of the former Regulations. And during the period of the violations alleged to have occurred in 1996 and 1997, you were and continue to be a United States person as defined by Section 760.1(b) of the Regulations.
2. During the period December 1989 through April 1997, you engaged in activities involving the sale or transfer of goods and services, including information, between the United States and Brazil, Hungary, Indonesia, Jordan, Oman, Qatar, or the United Arab Emirates. Such activities were in the interstate or foreign commerce of the United States, as defined in Section 769.1(d) of the former Regulations or Section 760.1(d) of the Regulations.
3. In connection with the activities referred to in paragraph 2 above, on three (3) occasions you were requested to add your confirmation to letters of credit issued by The British Bank of The Middle East in Qatar. Table A, which is attached and incorporated by this reference, identifies the three letters of credit, the

dates you received the letters of credit, and a boycott request contained in each respective letter of credit.

4. In connection with the three requests from The British Bank of The Middle East, referred to in paragraph 3 above, you responded in writing and stated, in pertinent part, as follows:

WE CONFIRM THIS CREDIT AND UNDERTAKE THAT ALL DRAFTS DRAWN UNDER AND IN ACCORDANCE WITH THE/CREDIT TERMS³ SHALL/WILL BE DULY HONOURED⁴ UPON DELIVERY OF DOCUMENTS AS SPECIFIED.

5. By confirming the letters of credit referred to in paragraphs 3 and 4, above, on three occasions you knowingly agreed to refuse to do business with blacklisted persons or agreed to require another person to refuse to do business with blacklisted persons, pursuant to an agreement with or a request from or on behalf of a boycotting country, a violation of Section 769.2(a) of the former Regulations, and not excepted. We therefore charge you with three (3) violations of Section 769.2(a) of the former Regulations.
6. In connection with the activities referred to in paragraph 2 above, on or about February 24, 1997, you were asked by The British Bank of The Middle East in Sharjah, United Arab Emirates, to advise a letter of credit, reference number SHJ970167, to a United States beneficiary. The letter of credit contained the following documentary requirement, compliance with which is prohibited by the Regulations.

"CERTIFICATE ISSUED BY CHAMBER OF COMMERCE, BENEFICIARY AND/OR BY MANUFACTURERS STATING THAT MERCHANDISE IS OF NON-ISRAELI ORIGIN."

7. On or about February 27, 1997, you confirmed the letter of credit referred to in paragraph 6, an activity prohibited by Section 760.2(f), and not excepted. We therefore charge you with one (1) violation of Section 760.2(f).

³ Two of the letters of credit used "with the terms" and one used "with credit terms."

⁴ Two of the letters of credit used "shall be duly honoured" and one used "will be duly honoured."

8. In connection with the activities referred to in paragraph 2 above, on nine (9) occasions you received letters of credit containing requests to engage in restrictive trade practices or boycotts, as described in Table B which is attached and incorporated herein by this reference. You failed to report, or reported late, to the Department your receipts of these boycott requests, as directed by Section 769.6 of the former Regulations and Section 760.5 of the Regulations. We therefore charge you with eight (8) violations of Section 769.6 of the former Regulations, and one (1) violation of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Section 11(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.⁵

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between the Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this

⁵ Administrative sanctions may include any or all the following:

- a. Denial of export privileges (see Section 764.3(a)(2) and Sections 788A.3(a)(1) and (2) of the Regulations);
- b. Exclusion from practice (see Section 764.3(a)(3) and Section 788A.3(a)(3) of the Regulations); and/or
- c. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) and Section 788A.3(a)(4) of the Regulations).

letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at the following address:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Jeffrey E.M. Joyner, Esq.

Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,

Dexter M. Price
Acting Director
Office of Antiboycott Compliance

Enclosure

Q 616-16

Table A

Schedule of Alleged Violations of §769.2(a)
Agreements to Refuse to Do Business

The Hongkong and Shanghai Banking Corporation Limited,
New York Branch

Case No. 93-91

Letter of Credit Reference Number	Receipt Date (on or about)	Confirmation Date (on or about)	Condition to Which a U.S. Person May Not Agree (See Key)
DOH 890526	1/24/90	12/04/89	A
DOH 900086	2/10/90	2/07/90	A
DOH 900313	5/21/90	5/09/90	B

KEY TO LETTER OF CREDIT CONDITION

A = "On no condition may a Bank listed in the Arab Israeli
Boycott List be permitted to negotiate this credit."

B = "Shipment of goods ... manufactured by firms listed in the
Arab Israeli Boycott List is strictly prohibited."

Table B

Schedule of Alleged Reporting Requirements Violations:
Failure to Report and Failure to Report in a Timely Manner
Receipt of Boycott Requests¹

The Hongkong and Shanghai Banking Corporation Limited,
New York Branch

Case No. 93-91

Item	Letter of Credit Number	Date of Receipt (on or about)	Boycotting Country	Boycott Request (See Key)
1	DOH890526	1/24/90	Qatar	A, B, C, D
2	DOH900086	2/26/90	Qatar	A, B, C, D
3	AMM900258	5/07/90	Jordan	E, F
4	DOH900313	5/08/90	Qatar	A, B, C, G
5	DOH900359	5/23/90	Qatar	A, B, D
6	DOH900207	6/25/90	Qatar	A, B, D
7	DUB904639	10/31/90	U.A.E.	H, I
8	DUB904166	11/05/90	U.A.E.	H, I
9	BAF964344	12/09/96	Oman	J

KEY TO REPORTABLE REQUESTS²

A = "On no condition may a Bank listed in the Arab Israeli Boycott List be permitted to negotiate this credit."

B = "Shipment of goods of Israeli origin or manufactured by firms listed in the Arab Israeli Boycott List is strictly prohibited."

¹ Items 1 through 8 were failures to report under Section 769.6 of the former Regulations, and item 9 was a late report under Section 760.5 of the current Regulations.

² Some of the letters of credit used upper case characters.

KEY TO REPORTABLE REQUESTS (cont.)¹

- C = "Insurance Policy/Certificate must be accompanied by a certificate signed by the Insurance Company declaring that they are not on the Arab Israeli Boycott List."
- D = "Documents must include a certificate from the ... agents ... of the carrying vessel ... confirming that it ... is permitted to enter Arab ports."
- E = "On no condition may a Bank listed in the Arab Israeli Boycott List be permitted to negotiate this documentary credit."
- F = "A separate certificate to be issued by ... agents ... of the vessel carrying the goods certifying therein that the vessel is not banned entry to Jordanian ports for any reason whatsoever under the laws and regulations of Jordan."
- G = "Documents must include a certificate from the ... agents ... of the carrying vessel ... confirming that it ... is permitted to enter Arab ports."
- H = "Under no circumstances may a bank listed in the Arab Israeli Boycott Black List be permitted to negotiate this credit."
- I = "Bills of lading must be accompanied by a certificate issued by the ... agent, certifying that the carrying vessel is allowed by Arab authorities to call at Arabian ports ... during its voyage to the United Arab Emirates."
- J = "A certificate is required from the ... vessel (or their agents) stating that the vessel which is carrying the goods is not banned from entry to the ports of the Arab states for any reason whatsoever [sic] under the laws and regulations of such states."

¹ Some of the letters of credit used upper case characters.